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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

TAVARES STEFIN,

Defendant and Appellant.

B302765

(Los Angeles County
Super. Ct. No. BA227886)

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen Kennedy, Judge. Reversed and remanded with directions.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, and Kristen J. Inberg and Rama R. Maline, Deputy Attorneys General for Plaintiff and Respondent.

INTRODUCTION

Tavares Stefin appeals from the trial court's order summarily denying his petition for resentencing under Penal Code section 1170.95,¹ a provision of recently enacted Senate Bill No. 1437. Stefin contends, the People concede, and we agree the trial court incorrectly determined Senate Bill No. 1437 is unconstitutional and therefore erred in denying the petition on that ground. We reverse and remand for further proceedings under section 1170.95.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2005 a jury convicted Stefin on two counts of second degree murder and one count each of robbery and burglary. On the murder counts, the jury found true the firearm enhancement allegations under section 12022.53, subdivisions (c), (d), and (e), and on all counts the jury found true a gang enhancement allegation under section 186.22, subdivision (b)(1). The court sentenced Stefin to two concurrent terms of 40 years to life for the murders and stayed under section 654 additional terms imposed on the remaining counts.

On September 30, 2018 the Governor signed Senate Bill No. 1437, which became effective on January 1, 2019. (See *People v. Lamoureux* (2019) 42 Cal.App.5th 241, 247-249 (*Lamoureux*).) Senate Bill No. 1437 “amend[ed] the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to

¹ Statutory references are to the Penal Code.

kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f).) The Legislature accomplished these changes in the law through amendments to sections 188 and 189. (*Lamoureux*, at pp. 248-249.) The Legislature also added section 1170.95, which provides a procedure by which those convicted of murder can seek relief if the changes in the law would affect their previously sustained convictions. (Stats. 2018, ch. 1015, §§ 2-4; *Lamoureux*, at p. 249.)

In April 2019 Stefin petitioned for resentencing under newly enacted section 1170.95. The People opposed the petition on the ground Senate Bill No. 1437 violated the California Constitution. The People also argued that, even if the court determined Senate Bill No. 1437 was constitutional, Stefin was not eligible for relief under section 1170.95 because, although he “was convicted of murder as a non-shooter aider and abettor / co-conspirator,” in committing the offenses, he acted “with the intent to kill and/or was a major participant in the underlying felonies and acted with reckless indifference to human life.”

The trial court denied the petition on the ground Senate Bill No. 1437 violated the constitution by “illegally amend[ing]” Proposition 7, a voter initiative that increased the punishments for persons convicted of murder (Prop. 7, as approved by voters, Gen. Elec. (Nov. 7, 1978) (Proposition 7)), and Proposition 115, a voter initiative that augmented the list of predicate offenses for first degree felony-murder liability (Prop. 115, as approved by voters, Primary Elec. (June 5, 1990) (Proposition 115)). The court added, “I am not finding it unconstitutional on any other grounds, even though the prosecution has urged that there are other grounds that apply.” Stefin timely appealed.

DISCUSSION

A. *Senate Bill No. 1437*

To effectuate its amendments to the felony murder rule and the natural and probable consequences doctrine as the latter relates to murder, Senate Bill No. 1437 “added a crucial limitation’ to section 188, the statutory provision that defines malice for purposes of murder. [Citation.] As amended, section 188 provides in pertinent part as follows: ‘Except as stated in subdivision (e) of [s]ection 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.’” (*Lamoureux, supra*, 42 Cal.App.5th at pp. 248-249.)

Section 189, subdivision (e), as amended, in turn “provides that a participant in a specified felony is liable for murder for a death during the commission of the offense only if one of the following is proven: ‘(1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree. [¶] (3) The person was a major participant in the underlying felony and acted with reckless indifference to human life’” (*Lamoureux, supra*, 42 Cal.App.5th at p. 248.)

Senate Bill No. 1437 also added section 1170.95, “which permits an individual convicted of felony murder or murder under a natural and probable consequences theory to petition the sentencing court to vacate the conviction and to be resentenced on any remaining counts if he or she could not have been

convicted of first or second degree murder because of [Senate Bill No.] 1437's changes to sections 188 and 189. (§ 1170.95, subd. (a).) Section 1170.95 provides a petition for relief must include: '(A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a). [¶] (B) The superior court case number and year of the petitioner's conviction. [¶] (C) Whether the petitioner requests the appointment of counsel.' (§ 1170.95, subd. (b)(1).)" (*People v. Verdugo* (2020) 44 Cal.App.5th 320, 326-327 (*Verdugo*), review granted Mar. 18, 2020, S260493.)

If any of this required information "is missing and cannot be readily ascertained by the court, 'the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.' (§ 1170.95, subd. (b)(2).)" (*Verdugo, supra*, 44 Cal.App.5th at p. 327.) If, however, "the petition contains all required information, section 1170.95, subdivision (c), prescribes a two-step process for the court to determine if an order to show cause should issue: 'The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response . . . and the petitioner may file and serve a reply If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.'" (*Verdugo*, at p. 327.)

"Once the order to show cause issues, the court must hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any

remaining counts. (§ 1170.95, subd. (d)(1).)” (*Verdugo, supra*, 44 Cal.App.5th at p. 327.) “At that hearing, the prosecution has the burden of proving beyond a reasonable doubt that the petitioner is ineligible for resentencing. (§ 1170.95, subd. (d)(3).) The prosecutor and petitioner ‘may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.’ (*Ibid.*)” (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1136, review granted Mar. 18, 2020, S260598.)

B. *The Trial Court Erred in Ruling Senate Bill No. 1437 Is Unconstitutional*

The trial court denied Stefin’s petition for relief under section 1170.95 on the sole ground that Senate Bill No. 1437 is unconstitutional because it impermissibly amends Propositions 7 and 115. As the People acknowledge, that ruling was error: Senate Bill No. 1437 does not unconstitutionally amend those Propositions.² (See *People v. Prado* (2020) 49 Cal.App.5th 480, 492 [“the Legislature did not violate the constitutional limitation on amending or repealing an initiative statute when it passed Senate Bill 1437”]; *People v. Smith* (2020) 49 Cal.App.5th 85, 91-92 [“Senate Bill 1437 does not unconstitutionally amend section 190,” which was passed by referendum through Proposition 7]; *People v. Bucio* (2020) 48 Cal.App.5th 300, 307

² “The interpretation of a statute and the determination of its constitutionality are questions of law,” and “[i]n such cases, appellate courts apply a de novo standard of review.” (*People v. Health Laboratories of North America, Inc.* (2001) 87 Cal.App.4th 442, 445; see *People v. Tran* (2015) 61 Cal.4th 1160, 1166 [“We review de novo questions of statutory construction.”]; *People v. Solis* (2020) 46 Cal.App.5th 762, 771 [“We review questions regarding the constitutionality of a statute de novo.”].)

[“[Senate Bill No.] 1437 is constitutional”]; *People v. Solis* (2020) 46 Cal.App.5th 762, 769 [Senate Bill No. 1437 does not unconstitutionally amend Proposition 7 or Proposition 115 because it “does not authorize anything the two initiatives prohibited, nor prohibit anything they authorized”]; *People v. Cruz* (2020) 46 Cal.App.5th 740, 747 [“the Legislature’s enactment of Senate Bill 1437 has not undone what the voters accomplished with Proposition 7 or Proposition 115 and therefore the legislation does not violate the constitution”]; *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 275 [“Senate Bill 1437 was not an invalid amendment to Proposition 7 or Proposition 115 because it neither added to, nor took away from, the initiatives”]; *Lamoureux, supra*, 42 Cal.App.5th at p. 246 [“Senate Bill 1437 did not invalidly amend Proposition 7 or Proposition 115” and “does not contravene separation of powers principles or violate the rights of crime victims”].)

The People also concede Stefin satisfied the first step of the two-step process prescribed by section 1170.95, subdivision (c), for determining whether the court should issue an order to show cause. (See *Verdugo, supra*, 44 Cal.App.5th at pp. 327-328 [after the initial review under subdivision (b)(2) to determine “the facial sufficiency of the petition,” subdivision (c) “prescribes two additional court reviews before an order to show cause may issue, one made before any briefing to determine whether the petitioner has made a prima facie showing he or she falls within section 1170.95—that is, that the petitioner may be eligible for relief—and a second after briefing by both sides to determine whether the petitioner has made a prima facie showing he or she is entitled to relief”].) The People suggest “the appropriate action now is remand so that counsel may be appointed to further

explore the record of conviction and brief the relevant issues pursuant to section 1170.95, subdivision (c),” after which the trial court “will decide whether to issue an order to show cause.” Stefin does not disagree, and we think the People’s suggestion sound. Therefore, we vacate the trial court’s order denying Stefin’s petition and remand for those further proceedings.

DISPOSITION

The trial court’s order denying Stefin’s petition for sentencing relief under section 1170.95 is vacated and the matter remanded with directions to conduct further proceedings under that statute.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.